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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2013-585*

13 **DAVID LOUIS GENUT**
14 **4812 Woodwind Way**
Anaheim, CA 92807

A C C U S A T I O N

15 **Registered Nurse License No. 430134**
16 **Public Health Nurse Certificate No. 66668**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered
25 Nurse License Number 430134 to David Louis Genut (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on June 30, 2014, unless renewed.

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3. On or about July 29, 2003, the Board of Registered Nursing issued Public Health Nurse Certificate Number 66668 to Respondent. The Public Health Nurse Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2014, unless renewed.

JURISDICTION

4. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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1 9. Section 493 of the Code states:

2 Notwithstanding any other provision of law, in a proceeding conducted by a
3 board within the department pursuant to law to deny an application for a license or to
4 suspend or revoke a license or otherwise take disciplinary action against a person who
5 holds a license, upon the ground that the applicant or the licensee has been convicted
6 of a crime substantially related to the qualifications, functions, and duties of the
7 licensee in question, the record of conviction of the crime shall be conclusive
8 evidence of the fact that the conviction occurred, but only of that fact, and the board
9 may inquire into the circumstances surrounding the commission of the crime in order
10 to fix the degree of discipline or to determine if the conviction is substantially related
11 to the qualifications, functions, and duties of the licensee in question.

12 As used in this section, "license" includes "certificate," "permit," "authority,"
13 and "registration."

14 10. Section 2761 of the Code states:

15 The board may take disciplinary action against a certified or licensed nurse or
16 deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the
18 following:

19

20 (f) Conviction of a felony or of any offense substantially related to the
21 qualifications, functions, and duties of a registered nurse, in which event the record of
22 the conviction shall be conclusive evidence thereof.

23

24 11. Section 2762 of the Code states:

25 In addition to other acts constituting unprofessional conduct within the meaning
26 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
27 licensed under this chapter to do any of the following:

28

29 (b) Use any controlled substance as defined in Division 10 (commencing with
30 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
31 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
32 dangerous or injurious to himself or herself, any other person, or the public or to the
33 extent that such use impairs his or her ability to conduct with safety to the public the
34 practice authorized by his or her license.

35 (c) Be convicted of a criminal offense involving the prescription, consumption,
36 or self-administration of any of the substances described in subdivisions (a) and (b) of
37 this section, or the possession of, or falsification of a record pertaining to, the
38 substances described in subdivision (a) of this section, in which event the record of
39 the conviction is conclusive evidence thereof.

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12. Section 2765 of the Code states:

A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions and duties of a registered nurse is deemed to be a conviction within the meaning of this article. The board may order the license or certificate suspended or revoked, or may decline to issue a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1444, states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

14. California Code of Regulations, title 16, section 1445 states:

....

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

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1 (5) If applicable, evidence of expungement proceedings pursuant to Section
2 1203.4 of the Penal Code.

3 (6) Evidence, if any, of rehabilitation submitted by the licensee.

4 COSTS

5 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 FIRST CAUSE FOR DISCIPLINE

12 (February 28, 2005 Criminal Conviction for Public Intoxication on February 14, 2005)

13 16. Respondent has subjected his license to disciplinary action under sections 490 and
14 2761, subdivision (f) of the Code in that he was convicted of a crime that is substantially related
15 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
16 follows:

17 a. On or about February 28, 2005, in a criminal proceeding entitled *People of the*
18 *State of California v. David Luis Genut*, in Los Angeles County Superior Court, case number
19 D278250, Respondent was convicted on his plea of guilty of violating Penal Code section 647,
20 subdivision (f), public intoxication, a misdemeanor.

21 b. As a result of the conviction, on or about February 28, 2005, Respondent was
22 sentenced to two days in the Los Angeles County Jail, with credit for two days. Respondent was
23 granted one year summary probation, and ordered to comply with the terms of probation.

24 c. The facts that led to the conviction are that on or about the early morning of
25 February 14, 2005, officers with the Long Beach Police Department found Respondent wandering
26 in a public park. Respondent's eyes were bloodshot, his speech was slurred, he was unsteady on
27 his feet, he had an odor of an alcoholic beverage, and his attitude was belligerent. The officers
28 determined that Respondent was too intoxicated to care for his own safety and he was arrested.

1 During booking, Respondent provided two breath samples which were analyzed by the
2 Intoxilyzer with a blood alcohol concentration of .24 and .25 percent, respectively.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(August 12, 2009 Criminal Convictions for Possession of Drug Paraphernalia**
5 **& Resisting Arrest on February 25, 2009)**

6 17. Respondent has subjected his license to disciplinary action under sections 490 and
7 2761, subdivision (f) of the Code in that he was convicted of crimes that are substantially related
8 to the qualifications, functions, and duties of a registered nurse. The circumstances are as
9 follows:

10 a. On or about August 12, 2009, in a criminal proceeding entitled *State of New*
11 *Mexico v. David Genut*, in Lea County Magistrate Court (Lovington), case number M-25-MR-
12 2009-00036, Respondent was convicted on his plea of no contest to violating New Mexico
13 Statutes 30-22-1, resisting arrest; and New Mexico Statutes 30-31-25.1, possession of drug
14 paraphernalia.

15 b. As a result of the convictions, on or about August 12, 2009, Respondent was
16 sentenced to 364 days in jail, suspended, and unsupervised probation for 360 days. Respondent
17 received credit for four days served, and he was ordered to pay \$389 in fines and fees.

18 c. The facts that led to the convictions are that on or about the morning of
19 February 25, 2009, patrol deputies with the Lea County Sheriff's Office observed a vehicle,
20 driven by Respondent, following a vehicle too closely and attempting to pass it in a no passing
21 zone. The deputies conducted a traffic stop. Respondent stopped his vehicle in the parking lot of
22 a church, got out, and started walking away. The deputies intercepted Respondent and he
23 returned to his vehicle. Respondent had no plausible explanation why he was in the area; he was
24 evasive and acted very nervous. Respondent was observed attempting to hide a glass pipe in his
25 pants pocket. Respondent refused to relinquish the pipe and threw it into the front yard of the
26 church, where it was retrieved by a deputy. Respondent failed to comply with the deputy's
27 commands and he had to be taken to the ground by force. Respondent was arrested for resisting,
28 possession of drug paraphernalia, and traffic violations.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol in a Dangerous Manner)**

3 18. Respondent has subjected his registered nurse license to disciplinary action under
4 section 2762, subdivision (b) of the Code for unprofessional conduct in that on or about February
5 14, 2005, as described in paragraph 16, above, Respondent used alcoholic beverages to an extent
6 or in a manner that was potentially dangerous and injurious to himself, and to others.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Conviction of Drug & Alcohol-Related Criminal Offenses)**

9 19. Respondent has subjected his registered nurse license to disciplinary action under
10 section 2762, subdivision (c) of the Code for unprofessional conduct in that on or about February
11 28, 2005 and August 12, 2009, as described in paragraphs 16 and 17, above, Respondent was
12 convicted of drug and alcohol-related criminal offenses.

13 **DISCIPLINARY CONSIDERATIONS**

14 20. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
15 to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges the
16 following:

17 a. On or about August 18, 2005, in a prior disciplinary matter entitled *In the*
18 *Matter of the Accusation Against David Louis Genut*, Board of Registered Nursing case number
19 2006-21, the Board filed an Accusation alleging Respondent violated Code section 2761,
20 subdivision (a)(1) for gross negligence and incompetence, and Code section 2761, subdivision
21 (d), for violations of the Nursing Practice Act, when he was found to have falsified patients'
22 nursing notes, failed to prepare nursing notes, used "white out" on patients' records, and failed to
23 accurately document nursing notes during a period from September 2003 to December 2003,
24 while employed at a Long Beach hospital.

25 b. As a result of the Accusation, on or about February 3, 2006, Respondent
26 entered into a Stipulated Settlement for Public Reprimand. Respondent admitted the truth of each
27 and every charge and allegation in Accusation No. 2006-21.

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1 **PRAYER**

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Board of Registered Nursing issue a decision:


4 1. Revoking or suspending Registered Nurse License Number 430134, issued to David
5 Louis Genut;

6 2. Revoking or suspending Public Health Nurse Certificate Number 66668, issued to
7 David Louis Genut;

8 3. Ordering David Louis Genut to pay the Board of Registered Nursing the reasonable
9 costs of the investigation and enforcement of this case, pursuant to Business and Professions
10 Code section 125.3;

11 4. Taking such other and further action as deemed necessary and proper.
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13 DATED: JANUARY 25, 2013

14 
15 LOUISE R. BAILEY, M.ED., RN
16 Executive Officer
17 Board of Registered Nursing
18 Department of Consumer Affairs
19 State of California
20 Complainant
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